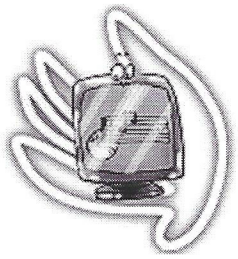
Internet Royalty Voodoo Economics

Date: Wednesday, October 09 @ 02:17:23 EST
Topic: Radio



College radio has a long-established tradition of supporting unsigned and independent recording artists. Quirky programming characteristics are among these noncommercial broadcasters' most endearing qualities, and the accompanying musical diversity provides upstart artists excellent opportunities to reach new audiences. The advent of Internet audio streaming allows many low-powered college stations to extend their influence to new audiences. For an institution unable to secure a license for a broadcast frequency, Internet audio streaming can provide the *only* means for student broadcasters to reach an audience.

By Joel Willer

Online music file sharing causes some artists to fear the Internet. Although many musicians recognize the promotional potential of the wise application of music downloading, backlash from this controversy has also been inappropriately generalized to live audio streaming by radio stations and webcasters. The fundamental difference between these distinct technologies is that with streaming no permanent files are saved to the listeners' computers. Audio streaming does not provide digital "perfect copies" of music recordings.

With the Digital Millennium Copyright Act, Congress created a new royalty fee to be paid to record labels and artists for recorded music performed over the Internet. Artists, long shorted fair compensation from record label contracts, readily welcomed the opportunity for new income from their work. Indeed, the record industry has fed the artists' frenzy surrounding Internet royalties to deflect attention from the lingering corporate greed musicians have already endured from the labels themselves. The corporate record world desperately needs musicians as allies in the court of public opinion. However, something has been missing in the glorious pictures of great new wealth the recording industry has painted for artists: specifics.

Particularly in the case of noncommercial college webcasters, the record industry has good reason to fear widespread public knowledge of the economic realities of the new royalties. First, should musicians become aware of the trifling amounts of potential royalties to be collected from educational stations, artists' enthusiasm would certainly wane. Second, thinking artists would easily see that continuing the symbiotic relationship between college radio and upstart musicians is of much greater value than minuscule royalty payments, especially if the royalty scheme otherwise kills off nascent noncommercial webcasters.

Grammy Award-winning singer-songwriter Janis Ian recognized the folly of record labels protecting artists when she penned one of her controversial commentaries for *Performing Songwriter* magazine: "I don't pretend to be an expert on intellectual property law, but I do know one thing: If a music industry executive claims I should agree with their agenda because it will make *me* more money, I put my hand on my wallet … and check it after they leave, just to make sure nothing's missing."

The Recording Industry Association of America's SoundExchange division has continually attempted to use the "little guy" image of recording artists as a human front for the multinational corporations represented by the RIAA membership. RIAA's fill-in-the-blank spokesperson of the day will inevitably weave into any sound bite reference to artists' deferred royalty compensation. In the case of college radio, RIAA wonks have even argued that excruciatingly detailed recordkeeping is mandatory to ensure obscure artists are fairly compensated for

airplay in eclectic formats.

Just how much money for artists are we really talking about?

The Librarian of Congress has adopted rates for noncommercial broadcasters of 0.02¢ per song per listener, plus an 8.8% royalty for ephemeral (temporary) copies made to facilitate the Internet retransmissions. The same $500 minimum fee applies to noncommercial broadcasters as was adopted for commercial webcasters, for each year or portion of a year. Most college broadcast stations, characterized by small Web audiences, probably will initially pay the minimum fee for their retransmissions, but are likely to see these fees grow with their Internet audiences. A college webcaster without a broadcast station license, on the other hand, might easily exceed the minimum annual fee because these stations will pay the same per-performance royalty as commercial webcasters, 0.07¢ per song per listener.

On the surface, these figures don't seem to be that big of a deal. The devil, however, is in the details. At least one congressman, Rep. Chris Shays (R-VT), has responded to constituent letters with his belief that the Librarian's rates are fair to both webcasters and to copyright owners. Like a good many others, Congressman Shays has been duped by the seemingly small figures in the Librarian's official report.

Using the University of Louisiana at Monroe's student-operated KXUL as an example, we can easily see how the Librarian's rates are regressive. Real world figures, instead of rhetorical abstractions, demonstrate that individual artists stand to gain very little monetarily from college webcasters, but stand to lose significant potential promotion if large numbers of college broadcasters are forced to shut down their webcasts because of the oppressive new fees and accompanying onerous recordkeeping requirements.

In contrast with many college radio stations, KXUL makes comparatively extensive use of computerized tools in its programming. This clarification is offered to head off any false conclusion that information available to KXUL is easily obtainable by the majority of college radio stations. Before generalizing this analysis to other college radio stations, I must also point out that music rotation on KXUL probably includes a list of songs much smaller than is typical of many college radio stations. As a result, the figures below will likely *overstate* the amounts of individual artist compensation across the universe of college radio stations.

An advantage provided by KXUL's resources is that the station can readily determine the frequency with which a particular song has been played on air. A review of historical airplay for one random week reveals that the average title is performed by KXUL 1.17 times each day. Of course, some songs are played more often than others, and many songs will be played for only a portion of each year, but this number represents a fair estimation of the high side of "average" on KXUL. Comparing this number to the total number of daily performances, using an estimation method established in the Librarian of Congress' rate determination, shows that the "average" song represents 0.406% of KXUL's airplay.

Assume for a moment that a benevolent SoundExchange does not withhold administrative costs from the $500 minimum annual royalty fee anticipated to be collected from KXUL. In such case, $2.03 of the total royalty would be generated annually by the "average" KXUL song. Of that amount, $1.02 (50%) would be distributed to the recording label, 91¢ (45%) to the featured artist, and 10¢ (5%) collectively to the non-featured musicians on the recording. In actuality, these figures would each be reduced by the amount of SoundExchange's administrative costs.

The annual royalty KXUL will pay a featured artist for the station's "average" recording could be used to supersize a fast food meal. What happens when KXUL's fees are combined with all other college stations?

It is difficult to accurately estimate the total number of college webcasters nationwide. In initial comments filed in the Copyright Office's recordkeeping proceeding related to this new royalty, the Intercollegiate Broadcasting System stated that 243 of the organization's 773 member stations report webcasting. IBS estimates two hundred more have been deterred from webcasting by fear of copyright consequences. Using these figures as a basis, I'll generously estimate a total of 500 college webcasters.

Multiplying KXUL's royalty figures by the estimated universe of college webcasters results in a nationwide annual total of just $456.75 for the featured artist for the "average" recording receiving college radio airplay. The same calculation predicts $50.75 collectively for the non-featured musicians on the "average" recording.

However, these estimates must be adjusted downward to reflect 1) college radio playlists are generally even more diverse than is characterized by KXUL, 2) stations paying the minimum annual fee rather than the actual royalty liability inflate the total, 3) actual royalties distributed will be reduced by SoundExchange administrative costs, and 4) those recordings that, unlike the "average," receive only a few spins on a station or stations.

We can therefore conclude that a featured artist on a recording receiving substantial nationwide airplay by college webcasters will annually receive less than a buck, perhaps *much* less, per station from the new royalties. Peripheral featured artists' royalties will amount to just pennies per station.

If artists knew the realistic royalty amounts represented by college radio retransmissions via the Internet, rather than the RIAA hype, which do you imaging they would chose: 1) to forego negligible royalty payments to ensure college webasters can survive, or 2) to continue receiving the promotional benefit from airplay on an estimated 500 college Web stations nationwide?

Given the inconsequential level of royalty compensation from college webcasters flowing to the labels for each recording, can the generation of new revenue be the true motivation driving the RIAA?

For many college webcasters, concern over royalty fees has taken a back seat to outright fear of accompanying recordkeeping requirements that have yet to be announced by the Copyright Office. Even for those noncommercial webcasters that might be able to survive the oppressive fees, the costs and burdens of gearing up for yet-to-be-determined data collection mandates could end their Internet presence.

College radio stations are very different than commercial services that participated in the lengthy and expensive royalty arbitration process, in extremely important and fundamental ways. To comply with pending recordkeeping rules, as hinted at by the Copyright Office, could require college stations to change the very nature of their programming. New regulations could force college radio stations to programmatically cease being "college radio stations." For many, continuing their Web streaming is not worth that cost.

Other potential requirements, like reporting the total number of Internet visitors listening to each specific song performed, is currently technologically impossible for even the best equipped college radio stations. Faced with expensive hardware and software acquisition costs, many noncommercial webcasters will simply pull the plug on their streams.

The RIAA and its SoundExchange division are partially to blame for the turmoil that continues to exist as we rapidly approach the due date for payment of retroactive royalty fees. Unlike small noncommercial radio stations, the RIAA and SoundExchange had seats at the arbitration table and had the opportunity to influence that decision. Testimony by RIAA executives misled the arbitration panel about the circumstances and capabilities of noncommercial webcasters. Perhaps that testimony was genuinely uninformed, and these executives were honestly unaware of the capabilities of various services likely to make use of the new statutory license. If that is the case, then that is the failing of the RIAA. In their positions, these recording industry officers are obliged to *make* themselves aware of important considerations relevant to their duties. SoundExchange and the RIAA must now contribute to remedying the problem that is, in part, of their own creation.

The copyright law allows -- and indeed, encourages -- negotiated settlement agreements between copyright owners and Internet services. A solution fair to both parties could be reached which would result in the most expedient resolution, avoiding protracted litigation, and enabling the largest net compensation to artists, all while preserving noncommercial college webcasting.

Sitting in the offices of Steven Marks, RIAA Senior Vice President for Business and Legal Affairs, and of

SoundExchange Executive Director John Simson, I have been told that the recording industry representatives will not enter into negotiations with noncommercial college webcasters unless and until an agreement is reached with commercial webcasters. However, Simson publicly committed, just last month in an Associated Press article, to actively negotiating with college webcasters. Similar sentiment was also recently repeated in a report at Wired.com.

It's now incumbent upon Simson to prove that his promises are more than mere press statements meant to mollify artists, politicians, and the public. There's no need to wait for other deals to be done.

-- Joel Willer
University of Louisiana at Monroe

A related series of articles is available at:

Royalty Voodoo Economics: Part 1

Royalty Voodoo Economics: Part 2

Royalty Voodoo Economics: Part 3

Royalty Voodoo Economics: Part 4

Royalty Voodoo Economics: Part 5

This article comes from Indie-Music.com
http://www.indie-music.com

The URL for this article is:
http://www.indie-music.com/article.php?sid=1757